

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

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LEE HARTWELL

Plaintiff-Petitioner

VS.

**THE CITY OF MONTGOMERY,
ALABAMA, and the PERSONNEL
BOARD OF THE CITY AND
COUNTY OF MONTGOMERY,
ALABAMA,**

Defendants-Respondents.

2:06CV518-D

NOTICE OF REMOVAL OF CIVIL ACTION

To the Honorable Judges of the United States District Court for the Middle District of Alabama, Northern Division:

COMES NOW Defendant, City of Montgomery, pursuant to 28 U.S.C. §1441(a) and §1441(c), and hereby gives notice of the removal of the above-captioned civil action styled Lee Hartwell, Plaintiff-Petitioner, v. The City of Montgomery and the Personnel Board of the City and County of Montgomery, Alabama, Civil Action No.: CV-06-1173, from the Circuit Court of Montgomery County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division. Defendants also claim jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367.

As grounds for this removal, Defendant shows unto the Court and alleges as follows:

1. Defendant City of Montgomery is a municipal corporation in Montgomery County, Alabama.
2. The Plaintiff, Lee Hartwell, is over the age of majority and a resident citizen of the State of Alabama.

3. This action styled Lee Hartwell, Plaintiff-Petitioner, v. The City of Montgomery and the Personnel Board of the City and County of Montgomery, Alabama, was filed in the Circuit Court of Montgomery County, Alabama as Civil Action No.: CV-06-1173.

4. This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331 and supplemental jurisdiction pursuant to 28 U.S.C. §1367(a), and may be removed by Defendants pursuant to 28 U.S.C. §1441(a) and §1441(c). Defendants remove this action pursuant to 28 U.S.C. §1441(a) and §1441(c).

5. In the Complaint filed in the Circuit Court of Montgomery County, Alabama on April 27, 2006 and served on Defendants on May 11, 2006, Plaintiff, an employee of the City of Montgomery Fire Department, claims that his demotion was retaliation for exercising his First Amendment right to speak out against a tattoo carried on the arm of one of the District Chiefs in the Montgomery Fire Department; the said complaint regarding the tattoo having occurred some time prior to his demotion. Plaintiff's Complaint seeks relief under 42 U.S.C. §1983, as well as through writ of certiorari, for his demotion from Sergeant to Firefighter, and for the Montgomery City-County Personnel Board's action in upholding the said demotion. Specifically, Plaintiff asks for redress of an alleged violation of his First Amendment right to freedom of speech, and for an alleged violation of both his equal protection and due process rights under the Fourteenth Amendment to the United States Constitution, all by and through 42 U.S.C. §1983. Plaintiff also claims attorney's fees provided for by 42 U.S.C. §1988.

6. This notice of removal is timely filed with this Court within the thirty (30) day limitations set forth in 28 U.S.C. §1446(b). This action became removable on May 11, 2006, which is the date Defendants were served with the copy of Plaintiff's Complaint. This Court has supplemental jurisdiction over all other claims of the Plaintiff pursuant to 28 U.S.C. §1367(a).

7. This Notice of Removal is filed in this district and division pursuant to 28 U.S.C. §1446(a) and 28 U.S.C. §1443 as the court for the United States for the district and division within which such action is pending. Venue is proper pursuant to 28 U.S.C. §1391(b).

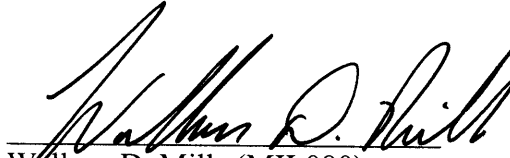
8. A copy of the Summons and Complaint served upon Defendants in said action and contained in the file of the Circuit Court of Montgomery County, Alabama, in said action is attached hereto as Exhibit "A" and made a part hereof in accordance with 28 U.S.C. §1446(a).

9. In accordance with 28 U.S.C. §1446(d), a true and correct copy of this notice of removal is being filed with the Clerk of the Circuit Court of Montgomery County, Alabama, and written notice thereof has been given to all adverse parties. A copy of the notice of filing of notice of removal is attached hereto as Exhibit "B".

10. By filing this notice of removal, this Defendant does not waive any defense that may be available to the Defendant.

WHEREFORE, Defendants file this notice of removal so as to effect the removal of this action from the Circuit Court of Montgomery County, Alabama, to this court. Defendants pray this Honorable Court will make such other orders as may be appropriate to affect the preparation and filing of a true record in this cause so that all proceedings that may have been had in said Circuit Court are removed to this Court. Defendants further pray that the removal of this cause to this Court should be affected and that no further or other proceedings shall be had with respect to this cause in the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this the 9th day of June, 2006.


Wallace D. Mills (MIL090)
Assistant City Attorney

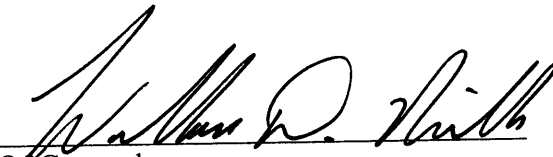
OF COUNSEL:

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(334) 241-2050
(334) 241-2310 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by placing a copy thereof in the United States Mail, postage prepaid and properly addressed on this the 9th day of June, 2006.

J. Bernard Brannan, Esq.
Post Office Box 307
Montgomery, AL 36101


Of Counsel